# STATE OF MICHIGAN

# COURT OF APPEALS

DETROIT EDISON COMPANY,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION, ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY, ENERGY MICHIGAN, INC., ATTORNEY GENERAL OF THE STATE OF MICHIGAN, and CONSTELLATION NEW ENERGY, INC.,

Appellees.

UNPUBLISHED
October 4, 2005

No. 252966
Public Service Commission
LC No. 00-013808

Before: Cooper, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

Appellant appeals as of right the December 18, 2003 order of the Michigan Public Service Commission (PSC) requiring appellant to reinstate its power supply cost recovery (PSCR) clause on January 1, 2004, and denying appellant's motion for an expedited hearing. We affirm.

Through enactment of the Customer Choice and Electricity Reliability Act, MCL 460.10 *et seq.*, the Michigan Legislature sought to allow competition in the provision of electricity. The act "included a provision . . . directing the PSC to enter orders providing for 'full recovery' of an incumbent utility's implementation costs and net stranded costs 'as determined by the commission.'" *Detroit Edison Co v Pub Service Comm*, 264 Mich App 462, 464; 691 NW2d 61 (2004), quoting MCL 460.10a(1).

A utility is also entitled to recover its reasonable costs in generating electricity. A PSCR factor is "that element of the rates to be charged for electric service to reflect power supply costs incurred by an electric utility and made pursuant to a power supply cost recovery clause incorporated in the rates or rate schedule of an electric utility." MCL 460.6j(1)(b). The PSC "may incorporate a power supply cost recovery clause in the electric rates or rate schedule of a utility, but is not required to do so." MCL 460.6j(2). A PSCR clause is:

> a clause in the electric rates or rate schedule of a utility which permits the monthly adjustment of rates for power supply to allow the utility to recover the

> booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility incurred under reasonable and prudent policies and practices. [MCL 460.6j(1)(a).]

The PSC suspended operation of appellant's PSCR clause to comply with MCL 460.10d(1), which froze rates at prescribed levels from June 5, 2000, through December 31, 2003. This legislation prohibited the "monthly adjustment of rates" for which appellant's PSCR clause provided. MCL 460.10d(2) in turn set forth a schedule of temporary rate caps for different classes of customers during specific periods beginning on January 1, 2004, with the expiration of the general freeze.

In June 2003, in anticipation of the expiration of the statutory freeze of MCL 460.10d(1), but aware of the caps imposed by MCL 460.10d(2), appellant filed an application seeking to increase its rates, and to implement PSCR plans. Specifically, appellant proposed that the PSC reinstate PSCR factors for each customer class at the time that the particular rate cap expired, and that otherwise the PSCR clause would remain suspended. In November 2003, appellant requested an expedited hearing on the proposal.

The PSC concluded that, because MCL 460.10d(1) suspended the PSCR clause, expiration of that provision reinstated it automatically. The PSC further noted that MCL 460.6j permits implementation of a factor before a hearing, and concluded that "[t]he distinct rate procedures prescribed by [MCL 460.6j] for the recovery of PSCR costs refute [appellant's] claim that its factor must remain suspended until the Commission grants additional rate relief that is not subject to [MCL 460.6j]." The PSC additionally noted that appellant was free to request a hearing earlier than it did, and declined to convene one on an expedited basis in response to appellant's belated plea. This appeal followed.

"The scope of appellate review for PSC orders is narrow." *Detroit Edison*, *supra* at 465. "Pursuant to MCL 462.25, all rates, fares, charges, regulations, practices, and services prescribed by the PSC are deemed prima facie to be lawful and reasonable." *Id*. "Under MCL 462.26(8), a party challenging an order of the PSC has the burden of proving by clear and satisfactory evidence that the order is unlawful or unreasonable." *Id*. "We review questions of statutory interpretation, such as whether a PSC order is lawful, de novo as questions of law," "giving great weight to any reasonable construction by the PSC of a regulatory scheme that it is empowered to administer." *Id*. "A PSC order is unreasonable if the evidence does not support it," and "[a] final order of the PSC must 'be supported by competent, material and substantial evidence on the whole record.'" *Id*., quoting Const 1963, art 6, § 28.

It is well settled that related statutes should be read in harmony with each other. See *Jennings v Southwood*, 446 Mich 125, 136-137; 521 NW2d 230 (1994). This Court has noted the apparent conflict between the flexibility envisioned in the operation of PSCR clauses pursuant to MCL 460.6j and the rate freeze imposed by MCL 460.10d(1), and resolved it by concluding that "the clear intent of the Legislature was to temporarily supplant the usual PSCR process so as to implement the rate freeze . . . ." *Attorney General v Michigan Pub Service Comm*, 249 Mich App 424, 432; 642 NW2d 691 (2002). Accordingly, MCL 460.10 does not repeal MCL 460.6j, "but rather suspends its operation for a specified period." *Id*. at 433. The

PSC thus correctly acknowledged the suspension of appellant's PSCR clause and its reactivation after the statutory freeze. In neither instance did the PSC have discretion in the matter.

After December 31, 2003, MCL 460.10d(1) gave way to MCL 460.10d(2), which prescribes no absolute freezing of rates, but rather a capping of rates under certain circumstances. The latter's partial relaxation of the rigors of the former allow for changes in rates, provided only that they not exceed the caps. It is a strained reading of MCL 460.10d to regard subsection (2) as continuing the temporary suspension of the PSCR clause required by subsection (1) until caps are lifted. Appellant's PSCR clause was reactivated by operation of MCL 460.10d(1) on January 1, 2004, and could operate as it had provided only that it did not result in raising rates above the caps of MCL 460.10d(2). As this Court has noted, once those caps have expired, "the usual PSCR process" will be re-instituted with no limitation whatsoever. *Id*. at 432.

Appellant protests that the result of the decision below is to allow rates to be adjusted for decreases in costs, but not increases. This is an exaggeration. The caps imposed by MCL 460.10d(2) limit, but do not freeze, rates. They could be adjusted upward in recognition of increased costs up to, but not beyond, the point at which the rates were capped. To the extent that the statutory caps then limit appellant's ability to recover certain increased costs, it is the result of operation of statutory law, not the discretion of the PSC.

For these reasons, the PSC did not err in reinstating appellant's PSCR clause as of January 1, 2004, pursuant to MCL 460.10d(1), and declining to extend the rate freeze until the caps of MCL 460.10d(2) expired.

Nor did the PSC err in taking this action while denying appellant's request for an expedited hearing. Although MCL 460.6j(2) requires that any order incorporating a PSCR clause be the result of a hearing, the PSCR clause at issue here was established through earlier proceedings, the validity of which is not challenged. We reject appellant's characterization of the reintroduction of the PSCR clause after the suspension period as new action requiring new proceedings.

But for the PSC to change the mitigation or PSCR factors, hearing procedures would be required, as the PSC acknowledged. In declining to convene an expedited hearing, the PSC observed that appellant was free to initiate proceedings at an earlier date, and further decreed that the issues appellant wished to develop would be addressed "during the upcoming proceedings in this docket," in the ordinary course of events. This result was neither unlawful nor unreasonable.[1]

Appellant presents a constitutional challenge to the decision below, but offers only general arguments, touching on the takings doctrine, US Const, Ams V and XIV, § 1; Const 1963, art 10, § 2, as well as Due Process and Equal Protection violations, US Const, Am XIV, §

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[1] Moreover, the PSC observed that MCL 460.6j "permits implementation of a factor prior to a hearing in the plan case," subject to adjustments in the course of proceedings that follow. See MCL 460.6j(9). Appellant thus had some ability to address its changing costs without delay.

1; Const 1963, art 1, §§ 2 and 17. Appellant's lack of searching analysis confirms that this passing bit of argument is derivative of, and adds nothing to, the statutory issues addressed and rejected above.

Appellant additionally included among the questions presented a challenge to the evidentiary foundation behind the PSC's decision. But appellant provided no argument stemming directly from such a proposition, and "[a] party may not merely announce his position and leave it to us to discover and rationalize the basis for his claim." *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992). Any such argument in this instance is inapt in any event. The decision below simply acknowledged the operation of statutory law, expressly leaving evidentiary and policy issues for another day.

We affirm.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly